

(2014) 04 SC CK 0104

In the Supreme Court Of India

Case No : Civil Appeal No. 3056 of 2008

V. Kala Bharathi and Others

APPELLANT

Vs

The Oriental Insurance Company Ltd. Br. Chitoor

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 472
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(1), Order 21 Rule 1(2), Order 21 Rule 1(3), Order 21 Rule 1(4)
Constitution of India, 1950 — Article 141
Interest Act, 1978 — Section 3(3)
Land Acquisition Act, 1894 — Section 23(1A), 28, 34
Motor Vehicles Act, 1988 — Section 173

Citation : (2014) 2 ACC 219 : (2014) ACJ 1612 : (2014) 4 AD (SC) 521 : AIR 2014 SC 1563 : (2014) 4 ALD 54 : (2014) 105 ALR 220 : (2014) 1 AnWR 743 : (2014) 3 BomCR 282 : (2014) 2 GLH 125 : (2015) 1 GLR 343 : (2014) 4 JT 467 : (2014) 2 KarLJ 631 : (2014) 2 KLJ 275 :

Hon'ble Judges : P. Sathasivam, C.J.;Ranjan Gogoi, J;N.V. Ramana, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—The short question to be answered in this appeal is whether the amount deposited by the judgment debtor in a decree is to be adjusted first towards interest or towards principal decretal amount.

2. The facts of the case are - On account of demise of an Engineering Graduate, Mr. V. Raja Kumar on 29.04.1993 in a road accident, his legal heirs, i.e., the Appellants herein filed a claim petition being M.V.O.P. 774 of 1993 before the Motor Accident Claims Tribunal (for short, 'the Tribunal') claiming compensation to the tune of Rs. 2 crores. The vehicle involved in the said accident was insured by the Respondent-Insurance Company. The Tribunal vide its Award dated 29.04.1997 awarded an amount of Rs. 98,40,500/- as compensation with interest @ 12% p.a. from the date of the petition, i.e., 25.10.1993 till the date of realization, apart from costs quantified at Rs. 99,443/-.

3. Being aggrieved, the Respondent-Insurance Company filed an appeal u/s 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') and to comply with the provisions contained therein, deposited a sum of Rs. 25,000/-. On 15.12.1997, the High Court in C.M.A. No. 1726 of 1997 granted stay of execution of the Award dated 29.04.1997 subject to the condition of depositing a sum of Rs. 30 lakhs and Rs. 99,443/- costs, which amounts were undisputedly deposited. The said order was made absolute on 15.07.1998 subject to the condition of depositing a further sum of Rs. 30 lakhs, which was also complied with. A Division Bench of the High Court partly allowed the appeal on 19.12.2001 thereby reducing the compensation amount from Rs. 98,40,500/- to Rs. 56,40,000/-, however, the interest rate of 12% p.a. was retained. The Respondent-Insurance Company also deposited a sum of Rs. 23,27,635/- on 19.09.2002, claiming to be full and final satisfaction of the award.

4. The Appellants filed Execution Petition No. 11 of 2003 on 06.06.2003 before the Executing Court/Tribunal claiming an amount of Rs. 20,16,700/-, which claim was denied by the Respondent-Insurance Company on the ground that its liability to pay interest gets discharged when it deposits the award amount in full. Thus, relying on the principle of accrual method, the Respondent-Insurance Company claimed that since it satisfied the award amount in full, no more interest was payable and as per its calculation, only a sum of Rs. 36,650/- was liable to be paid, which was deposited on 29.07.2003.

5. While adjudicating the aforesaid Execution Petition, the Executing Court took a view that the amounts deposited by the Respondent-Insurance Company from time to time were liable to be adjusted towards the component of interest first and thereafter to the portion of the decretal amount. After taking into consideration the amounts deposited by the Respondent-Insurance Company on different dates, its liability was fixed vide order dated 18.08.2004 to the extent of Rs. 17,70,657/- together with interest @ 12% p.a. from the date of filing of the Execution Petition till the date of realization.

6. The Respondent-Insurance Company assailed the aforesaid calculation/order of the Executing Court dated 18.08.2004 in Civil Revision Petition No. 4337 of 2004. The Appellants herein also filed Civil Revision Petition No. 6108/2004 thereby challenging that the Executing Court could not have adjusted the amount paid as costs towards the decretal amount. The learned single Judge of the High Court of Judicature, Andhra Pradesh, by judgment dated 29.07.2005, allowed both the Civil Revision Petitions while holding that (i) the part payments deserve to be adjusted towards the principal decretal amount and not any component of interest accrued upto that date; and (ii) the amount deposited towards costs, in pursuance of the directions of the court, must be adjusted towards that, and not towards payment of the decretal amount.

7. Learned Counsel for the Appellants vehemently contended that the impugned order cannot be sustained being contrary to law of the land declared Under Article 141 of the Constitution of India (for short, 'the Constitution'). He also

contended that judicial discipline to abide by declaration of law made by this Court cannot be forsaken under any pretext by any authority or court, be it even the highest Court in a State. It tantamount to judicial indiscipline. In support of his submissions, the learned Counsel relied upon the judgment of this Court M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, , AIR 1922 233 (Privy Council) , Meghraj and Others Vs. Mst. Bayabai and Others, and Gurpreet Singh Vs. Union of India (UOI), .

8. On the other hand, learned Counsel appearing for the Respondent-Insurance Company contended that, in the facts and circumstances of the case, there is no reason to interfere with the impugned order passed by the High Court.

9. We have heard learned Counsel for the parties and gone through the entire material available on record.

10. Before advertng to the various issues involved in the case and the contentions advanced by the counsel on either side, we have given our anxious consideration to the judgment impugned of the learned single Judge of the Andhra Pradesh High Court. The learned Judge, while adjudicating the issue, has considered the judgments of this Court in Meghraj (supra), Industrial Credit and Development Syndicate (supra) and Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa and others, and has passed the judgment by giving reasons which are basis for his conclusion.

11. We feel that it is appropriate to extract the relevant paragraphs from the impugned judgment.

It is true that in a plethora of judgments, the Supreme Court as well as the High Courts took the view that any amount deposited Under Rule 1 of Order 21 CPC must be first adjusted towards interest. Discussion on those judgments vis-à-vis Sub-rules (4) and (5) of Rule 1 of Order 21 CPC is prone to be taken or mistaken as an attempt to explain the judgments of the Supreme Court or High Courts. However, since some of the judgments of the Supreme Court were delivered at a time, when Sub-rules (4) and (5) were not on the statue book, and in the judgments rendered thereafter, the attention of the Hon'ble Supreme Court and the High Courts was not pointedly invited to these provisions in certain cases or they did not fall for consideration, it is felt necessary to address the issue...

Viewed from this context, it is evident that Parliament added sub-rules (4) and (5) with a definite and avowed object of assessing the running of interest on the deposits made by the decree holder into a Court. The background in which those provisions came to be incorporated has already been indicated in the preceding paragraphs. Sub-Rules (4) and (5) by themselves do not disclose as to whether the amount should be adjusted towards principal or interest. However, the expression "interest if any" occurring in both the provisions is significant. A decree may comprise of principle amount claimed in the suit, as well as a component of interest up to the date of decree. Once a decree is passed for

certain amount, it becomes a principle by itself and the liability to pay interest thereon, and if so, the rate at which it is to be paid, would depend upon the terms of decree. The amount that carries the interest till the date of realization would be the one stipulated in the decree. It is not permissible for a Court to award interest on interest. Sub-section (3) of Section 3 of the Interest Act clearly prohibits grant of interest on interest. Therefore, the only component of the decree that can be related to the expression "interest if any" occurring in Sub-sections (4) and (5) of Rule (1) is the decretal amount, which, in other words, is the principal.

It is true that the cases decided so far, do not strictly support this view, and in a way, may suggest the other point of view. However, an effort is made by this Court, to explain the purport of Sub-rules (4) and (5) of Rule 1. This Court is conscious of the requirement to follow the precedents, as well as its obligation, to give effect to the legislative mandate. An endeavor is made to honour both the obligations. Having regard to the importance of the issue and the implications involved in it, further discussion may ensue at appropriate levels.

12. From the above findings of the learned Judge, it appears that he passed the order basing on three considerations:

Firstly, the judgments relied upon by the claimants are based on the pre-amended provisions of Order 21 Rule 1 Code of Civil Procedure.

Secondly, in the cases which were decided subsequent to amendment, the issue of appropriation of amounts has not fallen for consideration.

Thirdly, a decree comprises of principal claimed in the suit as well as component of interest. Hence, once a decree is passed for certain amount, it becomes principal by itself and Section 3(3) of Interest Act clearly prohibits grant of interest on interest.

13. Now, before we proceed to decide the legality or otherwise of the order passed by the learned Judge, it is worthwhile to examine Rule 1 of Order XXI of the Code of Civil Procedure, 1908 (for short, 'the Code of Civil Procedure'), which reads as under:

ORDER XXI EXECUTION OF DECREES AND ORDERS

1. Modes of paying money under decree.- (1) All money, payable under a decree, shall be paid as follows, namely:

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the Court which made the decree, directs.

(2) Where any payment is made under Clause (a) or Clause (c) of Sub-rule (1),

the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgement due.

(3) Where money is paid by postal money order or through a bank under Clause (a) or Clause (b) of Sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:

(a) the number of the original suit;

(b) the names of the parties or where there are more than two Plaintiffs or more than two Defendants, as the case may be, the names of the first two Plaintiffs and the first two Defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer.

(4) On any amount paid under Clause (a) or Clause (c) of Sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in Sub-rule (2).

(5) On any amount paid under Clause (b) of Sub-rule (1), interest, if any, shall cease to run from the date of such payment.

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.

14. A bare perusal of the aforesaid provisions makes it amply clear that the scope of Order XXI Rule 1 of the CPC is that the judgment debtor is required to pay the decretal amount in one of the modes specified in Sub-rule (1) thereof. Sub-rule (2) of Rule 1 provides that once payment is made Under Sub-rule (1), it is the duty of the judgment debtor to give notice to the decree-holder through the Court or directly to him by registered post acknowledgement due. Sub-rule (3) of Rule 1 merely indicates that in case money is paid by postal money order or through a bank under Clause (a) or Clause (b) of Sub-rule (1) thereof, certain particulars are required to be accurately incorporated while making such payment. Sub-rules (4) and (5) of Rule 1 states from which date, interest shall cease to run-in case amount is paid under Clause (a) or (c) of Sub-rule (1), interest shall cease to run from the date of service of notice as indicated Under Sub-rule (2); while in case of out of court payment to the decree-holder by way of any of the modes mentioned under Clause (b) of Sub-rule (1), interest shall cease to run from the date of such payment.

15. The language contained in the aforesaid sub-rules clearly indicates the appropriation of amount to be made in case the decree contains a specific clause, specifying the manner in which the money deposited to be appropriated. Sub-rule (1)(c) of Rule 1 indicates the money deposited to be appropriated as per the direction of the Court, if there is a provision in that behalf. In the absence of specific direction with regard to appropriation, then only the manner of appropriation would arise for consideration. Sub-rules (2) to (5) of Rule 1 indicate the procedure to be followed when the deposit is made either under Clause (a) or (b) of Sub-rule (1) thereof, but it does not leave any scope for interpretation with regard to appropriation of deposited amount by the decree-holder.

16. In this regard, it is also pertinent to extract Rule 472 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short, 'the A.P.M.V. Rules'), which is as under:

472. Enforcement of an award of the Claims Tribunal:- Subject to the provisions of Section 174, the Claims Tribunal shall, for the purpose of enforcement of its award, have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such Court in a Civil Suit.

The above-said Rule indicates that the award passed by the Claims Tribunal is to be treated as if the decree for the payment of money passed by the Civil Court in a civil suit. Hence, in view of the specific provision contained in the A.P.M.V. Rules, the award passed by the Claims Tribunal is to be treated as a money decree. In Rajasthan State Road Transport Corporation, Jaipur (supra), this Court held that in executing the award of the Claims Tribunal, Executing Court is competent to invoke the beneficial provision under Order 21 Rule 1 of Code of Civil Procedure.

17. The Privy Council in AIR 1922 233 (Privy Council) , held as follows:

The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital.

(Emphasis supplied)

The above principle was reiterated by the Privy Council in AIR 1921 26 (Privy Council) .

18. We may notice that the principle laid down in the above case has been not only approved by the Supreme Court, but also followed in several other subsequent cases. In Meghraj (supra), it was held as under:

4.... Unless the mortgagees were informed that the mortgagors had deposited

the amount only towards the principal and not towards the interest, and the mortgagees agreed to withdraw the money from the Court accepting the conditional deposit, the normal rule that the amounts deposited in Court should first be applied towards satisfaction of the interest and costs and thereafter towards the principal would apply.

19. In Mathunni Mathai (supra), it was held that the right of the decree-holder to appropriate the amount deposited by the judgment debtor, either in the Court or paid outside, towards interest and other expenses is founded both on fairness and necessity. It was observed that the courts and the law have not looked upon favourably where the judgment debtor does not pay or deposit the decretal amount within the time granted as one cannot be permitted to take advantage of his own default. Therefore, the normal rule that is followed is to allow the deposit or payment, if it is in part, to be adjusted towards the interest due, etc.

20. In Industrial Credit and Development Syndicate (supra), it has been held that in cases where the trial court has not prescribed any mode for payment of decretal amount, except fixing the instalments, in the absence of agreement between the parties, regarding the mode of payment of decretal amount, the general rule of appropriation of payments towards decretal amount is that the said amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such direction, it is to be adjusted firstly towards interest and costs and thereafter towards principal amount. This is, of course, subject to the exception that the parties can agree to the adjustment of payment in any other manner despite the decree. In that case, the Supreme Court had an occasion to consider the method of appropriation and after noticing various decisions of the English Courts and the Privy Council, followed the judgment in Meghraj's case (supra).

21. We may also notice that in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, while differing with the view taken in Mathunni Mathai (supra), it was held that the normal rule of appropriation contained in Order XXI Rule 1 of the CPC relating to execution of decrees for recovery of money stands excluded by Sections 28 and 34 of the Land Acquisition Act, 1894 and the principles contained therein could not be extended to execution of award decrees under the said Act. The relevant para of the said judgment, being portion of para 14, reads as under:

14. Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation towards costs, interest, additional amount u/s 23(1-A) with interest and then to claim the total balance amount with further interest.

... ..

22. In Gurpreet Singh (supra), the Constitution Bench of this Court had an

occasion to consider the issue regarding execution of money decree, the principle of appropriation and its applicability, which was recently followed by this Court in *Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Company*, and culled down the principles laid down in *Gurpreet Singh's* case as follows:

- a) The general rule of appropriation towards a decretal amount was that such an amount was to be adjusted strictly in accordance with the directions contained in the decree and in the absence of such directions, adjustment be made firstly towards payment of interest and costs and thereafter towards payment of the principle amount subject, of course, to any agreement between the parties.
- b) The legislative intent in enacting sub-rules (4) and (5) is clear to the points that interest should cease to run on the deposit made by the judgment debtor and notice given or on the amount being tendered outside the Court in the manner provided in Order 21 Rule 1 sub Clause (D).
- c) If the payment made by the judgment debtors falls short of the decretal amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards costs and finally towards the principal amount due under the decree.
- d) Thereafter, no further interest would run on the sum appropriated towards the principal. In other words, if a part of the principal amount has been paid along with interest due thereon as on the date of issuance of notice of deposit of interest on the part of the principal sum will cease to run thereafter.
- e) In case where there is a shortfall in deposit of the principal amount, the decree holder would be entitled to adjust interest and costs first and then balance towards the principal and beyond that the decree holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole of the principal amount and seek for re-appropriation.

23. In the judgment referred to by the High Court in the impugned judgment, this Court and the Privy Council consistently have taken a view that in case of appropriation of amount unless the decree contains a specific provision, the amounts have to be appropriated as contemplated under Order 21 Rule 1. If there is a shortfall in deposit, the amount has to be adjusted towards interest and costs, then it has to be adjusted towards principal. The High Court has failed to appreciate this fact and misdirected itself in observing that these judgments are prior to the amendment to Order 21 Rule 1. In our considered view, as far as this aspect is considered, there is no much difference in the provisions prior to or subsequent to the amendment, because in the objects and reasons for amendment to Order XXI Rule 1, as observed by the Constitution bench in *Gurpreet Singh* the legislative intent in enacting Sub-rules (4) and (5) is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. The intent of the rule making authority is to leave no room for any frivolous pleas of payment of money due under a money decree.

24. We may add that the High Court proceeded on the assumption as if Sub-rules (4) and (5) of Rule 1, which were inserted pursuant to Amendment to CPC in 1976, there is change in procedural law and the tenor of Sub-rule (1) thereof. But, Sub-rules (4) and (5) do not have any relevance with regard to appropriation, except stating when interest ceases to run. Thus, it is no way guide for appropriation of amount as contemplated under Order XXI Rule 1 of the Code of Civil Procedure. In Industrial Credit Development Syndicate (supra) which is subsequent to the amendment to the provision, this Court has categorically observed the procedure to be followed and which squarely applies to the case, but the High Court has given its own interpretation to the judgment and failed to consider the law laid down by this Court in its proper perspective.

25. The next finding of the High Court is with regard to interest on interest.

In money suit, the amount consists of principal and interest till the suit is filed. But, in case of award passed under the Act, the question of inclusion of any interest on the decretal amount does not arise. Unfortunately, the High Court proceeded on the assumption that it amounts to interest on interest which is prohibited u/s 3(3)(c) of Interest Act, 1978 (for short, 'the Interest Act'). This is not so, as in the facts and circumstances of the present case, the decree passed by the trial Court or the appellate Court does not contain the mode of appropriation and in the absence of any such direction, the decree-holder is entitled to appropriate the amount deposited by the judgment debtor first towards interest, then cost and thereafter towards principal.

26. In view of above and more particularly keeping in view the ratio of the Constitution Bench judgment in Gurpreet Singh (supra), where considering an identical question in respect of Order XXI Rule 1 of the Code of Civil Procedure, it was held that if the amount deposited by the judgment debtor falls short of the decretal amount, the decree-holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the decree; we are of the opinion that the Appellants herein are entitled to the amount awarded by the Executing Court, as the amounts deposited by the judgment debtor fell short of the decretal amount. After such appropriation, the decree-holder is entitled to interest only to the extent of unpaid principal amount. Hence, interest be calculated on the unpaid principal amount.

27. We, therefore, allow the appeal, set aside the impugned judgment dated 29.07.2005 passed by the High Court and restore that of the Executing Court dated 18.08.2004.

28. No orders as to costs.